

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

FILED - GR

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CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY:JMW SCANNED BY: KB/9-17

ANDRE BELOUS,

Plaintiff-Appellant,

v.

CITY OF BATTLE CREEK,

Defendant-Appellee.

1:24-cv-957

Hala Y. Jarbou

Chief U.S. District Judge

NOTICE OF REMOVAL

TO: The United States District Court for the Western District of Michigan, Southern Division, the 37 th Circuit Court for the County of Calhoun, and the 10th District Court of Calhoun County, Michigan.

Pursuant to 28 U.S.C. §§ 1441, 1443, and 1446, Plaintiff-Appellant Andre Belous ("Appellant") hereby files this Notice of Removal of the following cases from the Circuit Court for the County of Calhoun and the 10th District Court of Calhoun County, State of Michigan, to the United States District Court for the Western District of Michigan, Southern Division:

- Circuit Court Case Nos.: 24-2437 AV and 24-1768 PZ

- District Court Case No.: C238515

In support of this Notice of Removal, Appellant states as follows:

I. BACKGROUND AND BASIS FOR REMOVAL

1. Background of the State Court Cases:

- District Court Case No. C238515: exhibit 1,2 Involves a Class D citation issued against the Appellant by the City of Battle Creek's Code Compliance Officer, Yolanda Johnson, who had not taken the constitutionally mandated oath of office as required by Article XI, Section 1 of the Michigan Constitution. The other citation resulted in a warrant for the Appellant's arrest, which lasted for over 3.5 years . exhibit 2

- Circuit Court Cases Nos. 24-2437 AV and 24-1768 PZ: These cases challenge the District Court's denial of Appellant's motions and address the City's fraudulent activities, including the misuse of COVID-19 relief funds, violation of Appellant's due process rights, and denial of Freedom of Information Act (FOIA) requests. Exhibit 10

2. Federal Question Jurisdiction:

- This Court has original jurisdiction under 28 U.S.C. § 1331 , as the Appellant raises federal questions involving violations of constitutional rights, denial of due process, misuse of federal funds, and potential violations of the False Claims Act (31 U.S.C. §§ 3729–3733).

- Additionally, this Notice of Removal is brought under 28 U.S.C. § 1443(1) , as the Appellant seeks to enforce civil rights protections guaranteed by federal law, specifically due process rights under the Fourteenth Amendment.

3. Consolidation and Privity:

- The Appellant seeks the consolidation of all aforementioned cases under federal jurisdiction to ensure a unified and impartial review of the federal and constitutional issues raised. The Circuit Court cases and District Court case are intrinsically linked by the common issues of fraud, ultra vires actions, violations of constitutional rights, and the City's attempts to obscure these through the denial of FOIA requests.

- The doctrine of privity applies here as the City of Battle Creek, through its officials and agents, has acted in concert across these proceedings, violating federal statutes and constitutional mandates.

II. PROCEDURAL COMPLIANCE UNDER 28 U.S.C. § 1446

4. Timeliness of Removal:

- Pursuant to 28 U.S.C. § 1446(b)(1) , this Notice of Removal is timely filed within 30 days of the City of Battle Creek's denial of the FOIA request on August 30, 2024, which constitutes new evidence of the City's fraudulent concealment of the Code Compliance Office's legal status. This denial was a key event demonstrating the necessity of federal court intervention. Exhibit 9

5. Filing and Service Requirements:

- In compliance with 28 U.S.C. § 1446(a) , copies of all process, pleadings, and orders served in the Circuit Court and District Court actions are attached to this notice as Exhibit 1-11

- A copy of this Notice of Removal will be promptly filed with the clerks of the Circuit Court for the County of Calhoun and the 10th District Court of Calhoun County, as required by 28 U.S.C. § 1446(d) , and served on the City of Battle Creek.

6. Venue:

- The United States District Court for the Western District of Michigan, Southern Division, is the appropriate venue for this removal under 28 U.S.C. § 1441(a) because it is the district embracing the location where the state court actions are pending.

III. FEDERAL CLAIMS AND GROUNDS FOR REMOVAL

7. Civil Rights Violations:

- The City's actions, including the issuance of citations by Code Compliance Officers who did not take the constitutionally required oath of office, constitute violations of Appellant's rights under 42 U.S.C. § 1983 and 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law). These actions deprived Appellant of due process and property rights in violation of the Fourteenth Amendment. Exhibit 1,2,11

8. Conspiracy Against Rights:

- The City's coordinated efforts to conceal the status of Code Compliance Officers, deny FOIA requests, and retaliate against the Appellant's whistleblowing activities may constitute a conspiracy to violate rights under 18 U.S.C. § 241 . exhibit 10

9. Fraud and Misuse of Federal Funds:

- The misuse of COVID-19 relief funds by employing officers without proper legal status falls under the scope of the False Claims Act (31 U.S.C. §§ 3729–3733) . The City's denial of FOIA requests supports an inference of fraud and concealment of the misuse of federal funds. Exhibit 10

10. Whistleblower Protections:

- The Appellant is entitled to protection under the Whistleblower Protection Act (5 U.S.C. § 2302) for reporting the City's fraudulent activities. The retaliation faced, including the arrest warrant and citation, substantiates a federal interest in safeguarding the Appellant's rights. Exhibit 10

IV. REQUESTED RELIEF

WHEREFORE, the Appellant respectfully requests that the United States District Court for the Western District of Michigan, Southern Division:

1. Assume jurisdiction over this matter and consolidate the District Court Case No. C238515 with Circuit Court Cases Nos. 24-2437 AV and 24-1768 PZ.
2. Grant a stay of all ongoing state court proceedings related to these cases.
3. Provide a declaratory judgment that the actions taken by the City of Battle Creek and its Code Compliance Officers are void due to the lack of lawful authority, as they did not comply with the constitutional oath of office requirement.
4. Address the denial of FOIA requests and order the City to disclose the requested information regarding the Code Compliance Office's status and operations.
5. Protect the Appellant under federal whistleblower statutes and order appropriate sanctions against the City of Battle Creek for its fraudulent actions and misrepresentations.
6. Award any other relief this Court deems just and appropriate, including an injunction against further enforcement actions by unauthorized Code Compliance Officers.

Respectfully submitted,

Andre Belous

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16.09.2024

ATTACHMENT EXHIBITS 1-12